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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

AUG -9 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In Re )  
 )  
Amendment of Section 76.51 ) CS Docket 96-119  
of the Commission's Rules to )  
Include Dubuque, Iowa, in the )  
Cedar Rapids-Waterloo, Iowa )  
Television Market )

**REPLY COMMENTS OF DUBUQUE TV LIMITED PARTNERSHIP**

Dubuque TV Limited Partnership, licensee of Station KFXB(TV), Dubuque, Iowa ("Dubuque TV"), by its attorney, hereby replies to the Comments that were filed in this rulemaking proceeding by Cedar Rapids Television Company ("CRTV"), licensee of Station KCRG-TV, Cedar Rapids, Iowa.

**I. Preliminary Statement**

This rulemaking proceeding was initiated in response to a Petition for Rulemaking filed by CRTV. In its Petition, CRTV made broad and general claims to the effect that: (i) Cedar Rapids, Waterloo and Dubuque are economically interdependent and that the "commercial and cultural life of these cities are intimately connected," (ii) the television stations licensed to all three cities provide service to substantially the same area and populations, and (iii) the "stations licensed to Cedar Rapids, Waterloo and Dubuque now compete head-to-head for the same viewers and advertising dollars." Based upon these claims and additional claims regarding cable carriage and audience ratings, the Commission concluded that "a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process." In inviting comments on the proposal, however, the

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Commission noted that the facts that CRTV had cited regarding the distances between the three communities would not be sufficient, standing alone, to establish the "requisite showing of commonality among these communities." The Commission further noted that, while KCRG-TV does provide Grade B coverage to Dubuque, it was "not apparent" that a Dubuque station would place such a signal contour over the Cedar Rapids-Waterloo market." The Commission also pointed out that CRTV, as the proponent of the proposed change in market designation, should be mindful of the fact that "the standard of proof to change [a market designation] is higher than the standard to simply initiate a rulemaking proceeding." As will be shown below, CRTV has failed to carry its burden of proof, and the proposal to add Dubuque to the Cedar Rapids-Waterloo market designation should be denied.

## **II. Discussion**

### **A. Lack of Commonality Between Dubuque and Cedar Rapids/Waterloo**

In its Comments in this proceeding, CRTV ignored the Commission's warning that it bears the burden of proving with facts, not merely conclusory statements, that the factors which justify a change in market designation are present in this case. Rather than submit factual information to support its claim that there is a "commonality of interests" between and among Waterloo, Cedar Rapids and Dubuque, and that the communities are "economically interdependent," CRTV simply reiterates the erroneous information<sup>1</sup> it provided in its Petition as to the distances

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<sup>1</sup>As pointed out in Dubuque TV's opening Comments in this proceeding at note 1, the distances from Dubuque to Cedar Rapids and Waterloo are significantly greater than claimed by CRTV.

from Dubuque to Cedar Rapids and Waterloo and its conclusory statement that the three communities are in "close geographic proximity," information which the Commission pointed out is insufficient to establish the "requisite commonality of interests."<sup>2</sup>

In its initial Comments in this proceeding, Dubuque TV submitted extensive information regarding the historical, political, economic, cultural and characteristics of Dubuque. The information submitted by Dubuque TV established that Dubuque is not "integrated" with or "connected" to Cedar Rapids or Waterloo in any significant respects, and that, in fact, Dubuque has little in common with either of these communities. In view of the substantial showing that Dubuque has little in common with Cedar Rapids or Waterloo submitted by Dubuque TV and CRTV's failure to supply any information to support its claim that the economies, commercial and social life of the three communities "are intimately connected," the Commission must conclude that the "requisite showing of commonality among these communities" has not been made.

#### **B. Lack of Equality of Coverage and Competition**

As noted in the Notice of Proposed Rulemaking in this proceeding, the "underlying competitive purpose of the market hyphenation rule [is] to delineate areas where stations can and do both actually and logically

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<sup>2</sup>In its Petition and again in its Comments, CRTV cited the facts that the network affiliated television stations licensed to Waterloo and Cedar Rapids are "significantly viewed" in Dubuque and that Nielsen and Arbitron have "long designated the market 'Cedar Rapids-Waterloo-Dubuque' in their ratings reports" as evidence of the economic interdependence and integration of the three communities. The facts cited prove no such thing. All they prove is that the television signals of the Waterloo and Cedar Rapids stations affiliated with the three major networks are viewable off the air in the Dubuque area and that residents of that area turn to these stations for when they want to view ABC, NBC and CBS programming.

compete." In all cases where the Commission has added an additional community to a market designation, it has found that the coverage of all of the stations to be included in the hyphenated market substantially overlaps and that all of the stations do, in fact, compete with each other throughout the proposed combined market area. See, e.g. cases cited at Notes 3 - 5 to CRTV's petition. It is clear from the specific facts cited by CRTV to support this assertion that KFXB, the lone Dubuque television station, does not compete with the other stations that would be included in the proposed hyphenated market in either Waterloo or Cedar Rapids. Moreover, although CRTV claims that the Grade B contour of KFXB "significantly overlaps those of" KCRG-TV, KGAN-TV and KWWL-TV, it is readily apparent from the coverage contours of these stations and KFXB that are depicted in Figure 2 to CRTV's comments, that the overlap between the Grade B contour of KFXB and those of KCRG-TV, KGAN-TV, and KWWL-TV is not significant from the perspective of KFXB's ability to compete with the other stations that would be included in the proposed market.<sup>3</sup>

Recognizing that KFXB does not provide Grade B coverage to either Cedar Rapids or Waterloo, CRTV contends that because KFXB has entered

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<sup>3</sup>Whether a particular amount of Grade B overlap is or is not "significant" is a subjective question the answer to which will vary depending upon the particular perspective of the party assessing the "significance" of the overlap. The objective facts reflected in Figure 2 to CRTV's Comments are that (i) the Grade B contours of KWWL, KCRG-TV and KGAN which appear to be co-centric encompass substantially the same area which contains approximately 235 square miles; (ii) the Grade B contour of Station KFXB encompass an area of approximately 120 square miles; the Grade B contours of KWWL, KCRG-TV and KGAN overlap between 50% and 60% of the area encompassed by KFXB's Grade B contour and (iv) KFXB's Grade B contour overlaps less than 30% of the area encompassed by the KWWL, KCRG-TV and KGAN Grade B contours.

into a time brokerage arrangement with Station KFXA, Cedar Rapids, Iowa, KFXB and KFXA should be viewed as a single station in evaluating whether they compete on an equal footing throughout the market area with the other stations licensed to Waterloo and Cedar Rapids. The fact that Dubuque TV has been forced by competition from the Cedar Rapids and Waterloo stations for advertising in its home market, Dubuque, to enter into a time brokerage arrangement with the licensee of KFXA for its economic survival did not transform KFXB and KFXA into a single television station for purposes of evaluating the relative competitive positions of the stations licensed to Waterloo, Cedar Rapids and Dubuque. The time brokerage arrangement is of finite duration and KFXB is now, and will remain, a facility separate and apart from KFXA with little ability to compete in either Cedar Rapids or Waterloo due to its lack of coverage in those communities. Accordingly, for purposes of delineating areas whether the stations licensed to the three communities that would be included in the proposed hyphenated market "can and do, both actually and logically, compete," KFXB's competitive position *visa vis* the Waterloo-Cedar Rapids station must be evaluated as a stand alone station.

Assuming, *arguendo*, that the existence of the time brokerage arrangement between KFXB and KFXA justified treating these two stations as a single station in evaluating the relative competitive positions of the stations licensed to Cedar Rapids, Waterloo, and Dubuque, addition of Dubuque to the "Cedar Rapids - Waterloo, Iowa" market designation would still be inappropriate. While there is a grain of truth to CRTV's claim that "Cedar Rapids-Waterloo stations compete against KFXA/KFXB," this competition is almost exclusively one sided. The Cedar Rapids-

Waterloo stations compete with KFXB for audience and revenues in its home market, Dubuque, and they compete with KFXA for audience and revenues in its home market, Cedar Rapids. However, due to coverage limitations, KFXB does not compete with the Cedar Rapids-Waterloo stations in Cedar Rapids or in Waterloo, and KFXA does not compete with the Cedar Rapids-Waterloo stations in Dubuque or in Waterloo.<sup>4</sup> The fact that neither KFXA nor KFXB are competitors in Waterloo is reflected in CRTV's Comments which list Dubuque business entities that advertise on KCRG-TV and Cedar Rapids business entities that advertise on KFXA/KFXB and notes that KFXA/KFXB have a joint sales office in Cedar Rapids. Conspicuously and decisively absent from CRTV's Comments are claims that any Waterloo businesses advertise on KFXA/KFXB or that KFXA/KFXB have a sales office in Waterloo.

### **III. Conclusion**

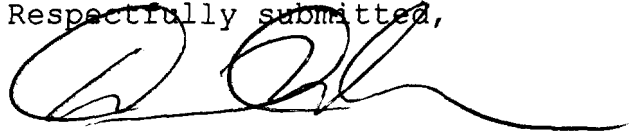
It is clear from the Comments filed in this proceeding that (i) the "commonality" of cultural, social and economic interests between and among the two communities currently included in the Cedar Rapids-Waterloo television market and the community proposed to be added to the market that is a prerequisite to a change in market designation does not exist,

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<sup>4</sup>Contrary to CRTV's assertion at note 5 of its Comments, the combined contours of KFXA and KFXB do not encompass Waterloo. In fact as reflected by the coverage map for KFXA (formerly KOCR) included in Exhibit 1 to CRTV's Petition for Rulemaking, the Grade B contour from KFXA's current facilities falls approximately 10 miles short of Waterloo. The coverage for KFXA depicted in Figure 2 to CRTV's Comments and represented by CRTV to be "based on the authorized operating facilities" of KFXA is actually coverage that KFXA will achieve when facilities proposed in a pending construction permit application (BPCT-951018KE) are constructed.

(ii) the coverage of KFXB does not substantially overlap that of the stations licensed to Cedar Rapids and Waterloo and (iii) KFXB does not compete with the Cedar Rapids-Waterloo stations for advertisers or audience. Accordingly, addition of Dubuque to the "Cedar Rapids-Waterloo" market designation would be contrary to the purposes of the market hyphenation rule and case precedent.<sup>5</sup>

Respectfully submitted,



David Tillotson  
4606 Charleston Terrace, N.W.  
Washington, DC 20007-1911  
(202) 625-6241

**Attorney for Dubuque TV Limited  
Partnership**

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<sup>5</sup> See, *Television Muscle Shoals, Inc.*, 48 RR 2d 1191 (1981), wherein the Commission rejected a proposal to change a market based on facts which are in all significant respects identical to the facts of this case (*i.e.*, the station licensed to the community proposed to be added to market did not provide Grade B coverage to either of the communities in the existing designated market whereas the stations licensed to communities in the existing market provided Grade B or better coverage to, and had substantial audience in, the community that was proposed to be added).

CERTIFICATE OF SERVICE

I, David Tillotson, do hereby certify that a copy of the foregoing **REPLY COMMENTS OF DUBUQUE TV LIMITED PARTNERSHIP** have been sent by first class mail, postage pre-paid, this 9th day of August 1996, to:

John C. Quale, Esq.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006

  
David Tillotson